No. 494.

# In the Supreme Court of the United States.

**DANIEL BROWN,**

*Plaintiff in Error,*

VS.

**JOSHUA S. BRACKETT et al.**

*Defendants in Error.*

## ARGUMENT FOR DEFENDANTS IN ERROR.

JOHN M. COGHLAN,
*Of Counsel.*

GRAY & HAVEN, San Francisco,
F. D. COLTON, Petaluma,
*Attorneys for Defendants in Error.*

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No. 532 Clay Street, opposite Leidesdorff.

1874.

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*Defendants in Error.*

**In Error to the Supreme Court of the State of California.**

## ARGUMENT OF THE DEFENDANTS IN ERROR.

I.

This Writ of Error should be dismissed on the grounds stated in our "points and authorities" on file. It not appearing affirmatively that the construction of the Act of Congress is drawn in question, or at all that it was necessarily drawn in question.

II.

There was no proof of ouster. The plaintiff failed to prove the identity of the land granted, with the land described in the complaint or in the possession of the defendants, or either of them.

III.

Counsel for plaintiff-in-error, makes the point that possession is admitted by the pleadings. This we deny.

The answers referred to by counsel do not contain admissions to the extent claimed. Take for instance the answer of Joshua S. Brackett, (fol. ). He denies the title of the plaintiff (fol. ). Denies that the grant has been adjudicated or declared a valid claim (fol. ). Alleges ownership in fee in himself of the particular tract of which

he is in possession (fol. ), describing it; but not describing the entire tract described in the complaint. Neither defendant admits possession of the entire tract or of that particular portion of the entire tract which is confirmed to Vasquez.

IV.

In further answer to plaintiff's argument, we have but little more to say, than to refer to our *Points and Authorities for Defendant in Error* on file.

The cases of *Ferris* vs. *Coover*, and *Mahony* vs. *Van Winkle*, to which the learned counsel refers to support his case, apparently hold that a confirmee under a Mexican grant may maintain ejectment for a portion of the land palpably included within the limits of the grant, as against one in possession claiming to be a pre-emptioner under United States law.

These cases cannot aid one like the plaintiff, who is not a confirmee, and whose grantor has neglected to file his claim before the U. S. Land Commission within the statutory limit of time.

To the position of counsel, that the record establishes the confirmation of the grant, we reply that The record merely establishes the confirmation of the *claim* of Vasquez to the fraction of the grant claimed by him.

There is no admission in pleadings, that either defendant is in the possession of any portion of the Vasquez claim. There is no evidence to identify the Vasquez claim with the defendants' possession.

V.

We do not fail to admire the industry and to respect the evident learning and ability of the learned counsel for the plaintiff, but we do believe that his argument would have claimed more attention from the Court fifteen years ago, than it can now after the adjudication of the cases cited by us in our POINT III. § (c.)

§a. The vice of the argument of the learned counsel consists in reading the statute as if the word *grant* was substituted for the word *claim*. The statute is—

"Section 8. Each person *claiming* lands in California by virtue of any right or title derived from the Spanish or Mexican Government, shall present the same to said Commissioners. * * *

"Section 13. That all lands, the *claims* to which have been finally rejected by the Commissioners in manner herein provided

* * * *, and all lands, the claims to which shall not have been presented to said Commissioners within * * * (the time has expired) shall be deemed held, and considered as part of the public domain of the United States; * * * * "

9 U. S. Statutes (at large) p. 331.

We claim that under this statute the confirmation of one section of a granted tract of land will not operate to the benefit of a person claiming another section and who has not filed a petition for confirmation. Each claimant must present his own claim, and a confirmation to one claimant will not be equivalent to a confirmation to another claimant, even under the same grant.

This question was directly considered and decided by this Court in *Banks* vs. *Moreno*, 39 Cal. R., p. 235, 239, and by the U. S. Supreme Court in *Carpentier* vs. *Montgomery*, 13 Wallace R., p. 494.

We also refer the Court to a long series of decisions tending to support the same proposition:

*U. S.* vs. *Fossatt*, 21 Howard U. S. 447.
*Estrada* vs. *Murphy*, 19 Cal. R., 248.
*Rico* vs. *Spence*, 21 Cal. R., p. 511.
*Stevenson* vs. *Bennett*, 35 Cal. R., 429.
*Steinbach* vs. *Moore*, 30 Cal. R., 507.
*Bernal* vs. *Lynch*, 36 Cal. R., 145.
*Yontz* vs. *U. S.*, 23 Howard, U. S., p. 498.
*Greer* vs. *Mezes*, 24 Howard, U. S. R., p. 273.
*DeArguello* vs. *Greer*, 26 Cal. R., p. 628.

§b. The Soulajulle grant was an inchoate grant. The Espediente describes the land thus (Trans. folio ): "the place named Soulajulle, bounded by the Laguna de San Antonio, by the land of Nicasios and by the rancho of Don Juan Martin to the extent of three (*sitios de granada mayor*) square leagues."——

The lands named as boundary tracts were also grants with boundaries unfixed and unlocated. No monuments are mentioned. No natural boundaries.

The Espediente further provides for the location of the grant by a magistrate, thereby showing the uncertainty of the description.

It reads—(See Transcript folio )—as follows:

"4th. The land of which donation is made in three square leaguas, little more or less, as is explained by the respective map. The magistrate who may give the possession will cause it to be meas-

ured in accordance with the ordinance leaving the excess that may result to the nation for the purposes that may be convenient."

It is clear that a title is not perfect until segregated from the public domain, and this grant has never been finally surveyed by either Mexican or United States authority.

*Bernal* vs. *Lynch*, 36 Cal. 145.
*Banks* vs. *Moreno*, 39 Cal. 239.
*Yontz* vs. *U. S.*, 23 Howard, U. S. 498.
*Greer* vs. *Mezes*, 24 Howard, U. S. 273.
*De Arguello* vs. *Greer*, 26 Cal. 628.
*Estrada* vs. *Murphy*, 19 Cal. 270.
*Stevenson* vs. *Bennett*, 35 Cal. 429.
*Fremont* vs. *U. S.*, 17 How., U. S. 554.
*Waterman* vs. *Smith*, 13 Cal. 410.
*Minturn* vs. *Brower*, 24 Cal. 665.
*Scale* vs. *Ford*, 29 Cal. 106.

§c. Unless the claim of the plaintiff or his grantor was presented to the United States Land Commission, under the Act of Congress of 3d March, 1851, and in this action confirmation is proved by the plaintiff a *non-suit* is proper.

We cite Sanderson's opinion. *Stevenson* vs. *Bennett*, 35 Cal. 429. Also *Minturn* vs. *Brower*, 24 Cal. 644.

VI.

Defendants moved for a *non-suit* upon other grounds—to wit:

No title proved in plaintiff.

No prior possession.

No ouster was proven.

No possession of any of the Vasquez tract was proven in either of the defendants.

But as plaintiff has not seen fit to notice these grounds, we have considered a reply as unnecessary. *Non constat*, the non-suit was not granted on one of these grounds.

This is better ascertained from the following opinion of the State Supreme Court in this action, taken from vol. 45 Cal. R., p. 167:

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BRACKETT. } *Opinion by the Court.*

The confirmation upon which the plaintiff relies was of a portion of the Soulajulle Rancho, described in the desree as "bounded on the

east by the land owned by William M. Fuller and running northward and southward by the entire distance of Wm. M. Fuller's west line, and running out therefrom four miles long and two miles wide, bounded on the north by the Laguna de San Antonio and south by the tract of land called Nicasio."

The description of the land sued for, as contained in the complaint, is set out by calls and distances, there is no apparent identity between the tract confirmed and the tract sued for, and no attempt was made at the trial to show that the land as described in the complaint was included in the decree of confirmation. Even assuming, therefore, that by their answers, the defendants admitted themselves in possession of portions of the general tract described in the complaint, the judgment of non-suit rendered on the ground that *no ouster had been proven*, was correct; for taking the admissions upon that point in connection with the complaint and all the evidence offered, it did not in any wise appear that the land in possession of the defendants was a part of the land confirmed to Vasquez, under whom the plaintiff claimed title. It is indispensable to a recovery in ejectment, that it should in some way appear that the defendants were at the commencement of the suit in possession of some part of the tract to which the plaintiff establishes his title.

It was claimed in argument, that the confirmation to Vasquez, though in terms for but a portion of the large tract called Soulajulle, was in effect an adjudication that the grant to Mesa was a valid grant to the entire tract, including that portion outside as well as that within the tract confirmed to Vasquez, and had the effect to confirm to Mesa and his grantees the entire tract, notwithstanding no claim for the confirmation thereof was ever presented to the Land Commission. But this view is wholly inadmissible, and if maintained would contravene the practice uniformily pursued under the Act of March, 1851, and would necessarily re-open most of the questions concerning the boundaries of Mexican grants, which it has been the effort of the Government for the last twenty years to settle and definitely determine.

Judgment affirmed.

Therefore we respectfully submit that the judgment of the Court below should be affirmed.

JOHN M. COGHLAN,
Of Counsel for Defendants in Error.

GRAY & HAVEN,
F. D. COLTON,
San Francisco, Cal.,
Att'ys for Defendants in Error.

No. 494

# In the Supreme Court of the United States.

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## POINTS AND AUTHORITIES OF DEFENDANTS IN ERROR.

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**In Error to the Supreme Court of the State of California.**

*Sir:*

*You will please enter my appearance for the defendants in error in this cause.*

*JOHN M. COGHLAN,*
*For Defendants in Error.*

*To D. W. MIDDLETON, Esq.*
*Clerk of the*
*U. S. Supreme Court.*

# Supreme Court of the United States.

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## POINTS AND AUTHORITIES.

### ABSTRACT OF THE CASE.

This action was brought in the District Court of the Seventh Judicial District of the State of California, and appealed by the plaintiff therein to the Supreme Court of the State.

Action in ejectment by Daniel Brown against Joshua S. Brackett and 25 others for a tract of land in Marin County, State of California, described in the complaint as originally granted by the Mexican Government, by the name of Soulajulle to one Ramon Mesa, on the 29th of March, 1844—also described in complaint as a tract which was so granted and has been declared and adjudged to be a valid claim by the proper authorities of the United States, under the provisions of the Act of Congress, approved and bearing date the 3d of March, 1851, and entitled "An Act to settle private land claims in California."

The complaint also gives as a further description, the courses and distances of a survey.

There are twenty-five defendants who answered in several separate answers denying plaintiff's title, or that he was entitled to the posses-

sion of the land, and denying ouster. The answers also denied that the grant had been declared valid.

On the trial the plaintiff introduced in evidence a grant by the Governor of California, to Ramon Mesa, dated March 29th, 1844, in which the land was described as "the place known by the name of Soulajulle, bounded by the Laguna de San Antonio, by a tract of land named Nicasio, and by rancho of Don Juan Martin." The plaintiff also offered in evidence a deed of the grant from Mesa to Walter Skidmore, dated August 6th, 1853, and deraigned title to the same land, from Walter Skidmore. The plaintiff then offered in evidence the petition of Pedro J. Vasquez to the Board of Commissioners for ascertaining and settling private land claims in the State of California, representing that the petitioner claimed a certain tract of land called *a part* of the rancho of Ramon Mesa, or "Soulajulle," containing twelve square miles, more or less, situated in the County of Marin, in said State of California. The petition prays the Board to take into consideration the petioner's claim to said land and decree his title to be valid and confirm the same.

Plaintiff next offered in evidence the final decree of confirmation by the District Court of the United States to the said Vasquez under the petition and Act of Congress aforesaid, which decree ordered, adjudged and decreed, that the claim of the appellant is a good and valid claim, and that the same be and is hereby confirmed. The land of which confirmation is made is *a portion* of a tract called Soulajulle, in Marin County, bounded and described. (See decree in transcript.)

Plaintiff then gave in evidence a quit claim deed from Vasquez to plaintiff's grantor.

The defendants moved for a nonsuit on the various grounds set forth in the transcript. The motion was granted, but upon what ground does not appear. Plaintiff appealed to the State Supreme Court.

The Supreme Court of the State of California affirmed the judgment of the District Court, and the case is reported in 45 Cal. Rep., p. 167.

## POINTS AND AUTHORITIES.

### I.

This Writ of Error should be dismissed for want of jurisdiction.

Until the plaintiff had proved that the land in possession of the defendants was a part of the land confirmed to Vasquez under whom plaintiff claimed title, there was no *ouster* proven, and plaintiff could not recover, and no construction of the act of Congress of the 3d of March, 1851, was required to secure the rights of either party. Hence it cannot be said that there is here, drawn in question the validity of a treaty (14 U. S. Statutes at Large, p. 385 § 2) or statute of, or an authority exercised under the United States, or any title, right, privilege or immunity claimed under the Constitution or any treaty or statute of or commission held or authority exercised under the United States, required by statute to give this Supreme Court jurisdiction of this action. To give this Court jurisdiction it must affirmatively appear that the construction of the act was drawn in question.

Act of Congress entitled, An Act to amend "An Act to establish the Judiciary Courts of the United States. Approved September 24th, 1789." Approved Feb. 5th, 1867.

14 U. S. Statutes at Large, p. 385 § 2.

1. Abbott's U. S. Practice p. 322.

2. Abbott's U. S. Practice p. 271.

Gibson v. Chouteau, 8 Wallace R., p. 314.

Crowell v. Randell, 10 Peters R., p. 391.

Railroad Co. v. Rock. 4 Wallace R., p. 177.

Suydam v. Williamson, 20 Howard, U. S.,p. 427.

Christ Church v. Co. of Phil., id., p. 26.

Taylor v. Morton, 2 Black, p. 481.

### II.

The Writ of Error should be dismissed for want of jurisdiction.

The plaintiff failed to prove the identity of the land to which he offered a grant, with the land described in the complaint or in the possession of the defendants.

Until this appears the construction of the Act of Congress relative to confirmation is not drawn in question.

The complaint contains three different descriptions of the land sued for, and neither corresponds with that contained in the grant to Mesa offered in evidence which is "bounded by the Laguna de San "Antonio, by a tract of land named Nicasio, and by rancho of Don "Juan Martin." There was no evidence to complete the identification.

It nowhere appears that the land described in the complaint is within the boundaries of the Soulajulle grant offered in evidence.

The nonsuit may have been granted for either of the above reasons.

Should the Court deny our motion to dismiss for want of jurisdiction, we make the further points.

## III.

The proposition on which the plaintiff relies is, that the confirmation of a part of the Soulajulle Rancho to Pedro J. Vasquez was, in effect, a confirmation of the whole Rancho to Ramon Mesa, the Mexican grantee, and enables him or his grantee to sustain ejectments on the lands outside of the Vasquez tract but within the outside boundaries given in the grant. This proposition we deny.

*(a)* The grant is an imperfect or inchoate grant. There was no approval of the Departmental Assembly. There has been no juridical possession or segregation. It is a grant of three leagues within given boundaries reserving the residue.

Estrada v. Murphy, 19 Cal,, 270.
Stevenson v. Bennett, 35 Cal., 429.
Banks v. Moreno, 39 Cal., 233.
Fremont v. U. S., 17 Howard U. S. R., 554.
Waterman v. Smith, 13 Cal., 410.
Minturn v. Brower, 24 Cal. R., 665.
Seale v. Ford, 29 Cal. R., 106.

*(b)* Such claims must be presented to the Board of Land Commissioners or they are lost.

United States v. Fossatt, 21 Howard, 447-8.
Estrada v. Murphy, 19 Cal., 248.
Rice v. Spence, 21 Cal., 511.
Stevenson v. Bennett, 35 Cal., 429.
Act of Congress, March 3, 1851, Secs. 8 and 13.
[Lester's Land Laws, p. 177.]
9 U. S. Statutes at Large, p. 331.

Steinbach v. Moore, 30 Cal. R., p. 507.
Bernal v. Lynch, 36 Cal. R., 145.
Yontz v. U. S., 23 Howard U. S. R., 498.
Greer v. Mezes, 24 Howard U. S. R., 273.
De Arguello v. Greer, 26 Cal. R., p. 628.

(*c*) Confirmation of a part of the land to Vasquez is not a confirmation of the residue to Ramon Mesa, the Mexican grantee of the whole grant.

The Act of Congress of March 3d, 1851, Sec. 8; 9 U. S. Statutes at Large, p. 331, provides for the presentation of claims. It does not provide for an abstract adjudication upon the validity of a grant.

The claim of Pedro J. Vasquez was to the specific tract confirmed to him. An adjudication that his claim was valid extends only to the land claimed by him.

United States v. Fossatt, 21 Howard, 477–8.
Estrada v. Murphy. 19 Cal., 248.
Rice v. Spence, 21 Cal., 511.
Carpentier v. Montgomery, Supreme Court of the United States: 13 Wallace, p. 480.
Banks v. Moreno, 39 Cal. R,, p. 235, *et seq.*
Emeric v. Penniman, 26 Cal. R., p. 123.

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